

of the preceding calendar year and who is a United States resident for any part of the current year will be considered to be taxable as a resident at the beginning of the current year. For purposes of this paragraph (e)(1), it is immaterial whether an individual is considered to be a resident under the substantial presence test or the green card test.

(2) *Residency in following year.* An alien individual who is a United States resident for any part of the current year and who is also a United States resident for any part of the following year (regardless of whether the individual has a closer connection to a foreign country than the United States during the current year) will be taxable as a resident through the end of the current year. For purposes of this paragraph (e)(2), it is immaterial whether an individual is considered to be a resident under the substantial presence test or the green card test.

(3) *Special rule.* If an individual meets the green card test for the current year but is not physically present in the United States during the current year, then the individual's residency starting date shall be the first day of the following year.

(4) *Example.* The following example illustrates the application of this paragraph (e).

*Example.* B, an alien individual who is a citizen of foreign country M, comes to the United States for the first time on May 1, 1985, and remains in the United States until November 5, 1985, when he returns to country M. B comes back to the United States on March 5, 1986 as a lawful permanent resident and remains in the United States until September 10, 1986, when he ceases to be a lawful permanent resident and returns to country M. B is not a resident in calendar year 1987. B's United States residency in calendar year 1985 continues through December 31, 1985, because he is a United States resident in the following calendar year. In calendar year 1986, B's United States residency is deemed to begin on January 1, 1986 because B qualified as a resident in the preceding calendar year. Thus, B's residency period in the United States begins on May 1, 1985, and ends on September 10, 1986.

[T.D. 8411, 57 FR 15247, Apr. 27, 1992; 57 FR 28612, June 26, 1992]

#### § 301.7701(b)-5 Coordination with section 877.

(a) *General rule.* An alien individual will be subject to United States income tax in the manner provided by section 877, regardless of whether the individual has a tax avoidance motive, if—

(1) The alien individual is a resident alien of the United States for at least three consecutive calendar years (the initial residency period) beginning after December 31, 1984;

(2) The period of residence for each of the three consecutive calendar years includes at least 183 days;

(3) The alien is once again taxed as a nonresident (including an individual taxed as a nonresident) under § 301.7701(b)-7(a)(1); and

(4) The alien then becomes a resident of the United States before the close of the third calendar year beginning after the individual's residency termination date in the initial residency period.

(b) *Tax imposed.* The tax provided for under paragraph (a) of this section will be imposed for the intervening period of nonresidency only if the amount of tax would exceed the amount of tax that would be imposed under section 871, relating to the taxation of nonresident aliens.

(c) *Example.* The following example illustrates the application of this section.

*Example.* B, a citizen of foreign country F, enters the United States on April 1, 1985, as a lawful permanent resident. On August 1, 1987, B ceases to be a lawful permanent resident and returns to country F. B meets the initial residency period requirement because he is a resident of the United States for at least 183 days in each of three consecutive years (1985, 1986 and 1987). B returns to the United States on October 5, 1990, as a lawful permanent resident. Because B became a resident of the United States before the close of the third calendar year (1990) beginning after the close of the initial residency period (August 1, 1987), he is subject to tax under section 877(b) for the intervening period of nonresidency, August 2, 1987 through October 4, 1990, if the amount of the tax imposed under section 877 is more than the tax imposed under section 871.

[T.D. 8411, 57 FR 15250, Apr. 27, 1992]

#### § 301.7701(b)-6 Taxable year.

(a) *In general.* An alien individual who has not established a fiscal year as